UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CHARLES A. BOGGS, individually and on behalf of all others similarly situated,

Case No. 1:10cv222-LG-RHW

Plaintiff,

v.

CERTAINTEED GYPSUM AND CEILING MANUFACTURING, INC., a Delaware Corporation, and CERTAINTEED GYPSUM, INC.

Defendants

______________________________________/

AMENDED COMPLAINT--CLASS ACTION

Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this class action on behalf of himself and all other similarly situated homeowners who own a home containing drywall manufactured, exported, distributed, delivered, supplied, inspected, marketed, and/or sold by Defendants CertainTeed Gypsum and Ceiling Manufacturing, Inc. and CertainTeed Gypsum, Inc. (hereafter referred to collectively as "CertainTeed" and/or Defendant) that is inherently defective because it emits various sulfide gases and/or other chemicals through "off-gassing" that cause property damage and health hazards. In support thereof, Plaintiff states as follows:

INTRODUCTION

1. There is a significant problem in the United States with defective American-manufactured drywall. This defective drywall contains high levels of sulfur, and/or other organic compounds. Defendant's drywall, which is a domestically manufactured product, not a Chinese-manufactured product, used in the homes of Plaintiff and the Plaintiff Class

Members, is inherently defective because it emits various sulfide gases and/or other chemicals through "off-gassing" that create noxious, "rotten egg-like" odors, and cause corrosion ("the Defect") of air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, electronic appliances, and other metal surfaces and household items ("Other Property"), and cause irritant effects and health hazards.

2. This Defect is latent and existed in Defendant's American-manufactured drywall at the time of installation regardless of the way the product was installed, maintained, and/or painted. There is no repair, short of removal, that will correct the Defect.

3. As a result of Defendant's conduct as alleged herein, Plaintiff and other Class Members have suffered economic losses and personal injuries because they own a home that contains inherently defective American- manufactured drywall, which has caused damage to their home and Other Property, and persons.

4. Plaintiff and Class Members have incurred or will incur damages in excess of $75,000 including, but not limited to: repair/replacement of their home; damage to Other Property, and/or any materials contaminated or corroded by the drywall as a result of "off-gassing"; medical expenses; and/or incidental and consequential damages.

5. Further, as a result of Defendant's conduct as alleged herein, Plaintiff and other Class Members in the United States, and particularly in Mississippi, have suffered physical harm and/or been exposed to an increased risk of physical harm and thus have a need for injunctive and/or equitable relief in the form of emergency notice, environmental monitoring and medical monitoring.

6. Plaintiff brings this action on behalf of a Class of all similarly situated owners of residential homes in the United States that contain defective, hazardous, or dangerous American-manufactured drywall manufactured, exported, distributed, delivered, supplied, inspected, marketed, and/or sold by Defendant, and on behalf of a subclass of similarly situated Mississippi homeowners.

JURISDICTION, PARTIES, AND VENUE

7. This nationwide class action is within the original jurisdiction of this Court by virtue of 28 U.S.C. §1332(d)(2) and the Class Action Fairness Act. The amount in controversy of this Class action exceeds five million dollars ($5,000,000.00), exclusive of interest and costs.

8. Venue in this district satisfies the requirements of 28 U.S.C. §1391(a) because a substantial part of the events and occurrences giving rise to the claim occurred in this district, and/or a substantial part of the property that is the subject of this action is situated in this district.

PARTIES

9. Plaintiff Charles A. Boggs is a resident of Harrison County, Mississippi, currently residing at 630 West Beach Boulevard, Long Beach, Mississippi ("Boggs home"). The Boggs home is the subject matter of the instant lawsuit. Plaintiff's home was repaired and renovated with defective drywall manufactured and supplied by CertainTeed.

10. Defendant CertainTeed is organized and incorporated under the laws of the State of Delaware, with its principal place of business located at 750 East Swedesford

Road, Valley Forge, Pennsylvania 19482. Defendant is one of the largest manufacturers of gypsum board in the world.

11. Defendant CertainTeed directly, or indirectly through agents, affiliates or co-conspirators, manufactured, processed, distributed, delivered, supplied, inspected, marketed and/or sold defective American-manufactured drywall in the United States, including Mississippi. Defendant CertainTeed's acts or omissions related to defective American-manufactured drywall, directly, or indirectly through agents, affiliates or co-conspirators, economically and physically injured Plaintiff and Class Members as alleged herein.

GENERAL ALLEGATIONS

A. Drywall Background

12. Drywall is also commonly known as gypsum board, wallboard, plasterboard, rock lath, sheetrock, gyproc, or simply board.

13. A drywall panel is made of a paper liner wrapped around an inner core made primarily from hardened gypsum plaster.

14. Drywall is typically available in 4 ft (1219 mm) wide sheets of various lengths. Newly formed sheets are cut from a belt, the result of a continuous manufacturing process.

15. The most commonly used drywall is one-half-inch thick but can range from one quarter (6.35 mm) to one inch (25.4 mm) thick.

16. The core material of drywall, gypsum, is available in two forms, pure gypsum, which is naturally occurring, and synthetic gypsum, which is manmade.

17. Pure gypsum is a white to transparent mineral, but sometimes impurities color it grey, brown, or pink.

18. Synthetic gypsum is generally manufactured with byproducts of coal-fired power plants.

19. Coal combustion byproducts ("CCBs" or "CCPs") are the inorganic residues that remain after pulverized coal is burned.

20. The primary CCBs used in drywall are byproducts resulting from a utility's attempts to remove sulfur from flue gases.

21. In order to meet emission standards, many utilities have installed flue-gas-desulfurization (FGD) equipment. Flue gas desulfurization is a chemical process to remove sulfur oxides from the flue gas at coal-burning power plants.

22. Various FGD methods have been developed that chemically combine the sulfur gases released in coal combustion by reacting them with a sorbent, such as limestone or lime.

23. As the flue gas comes in contact with the slurry of calcium salts, sulfur dioxide reacts with the calcium to form hydrous calcium sulfate, otherwise known as gypsum.

24. Twenty to thirty percent of all American-manufactured drywall is made with synthetic gypsum.

25. Defendant produces synthetic gypsum utilizing waste from the pollution scrubbers of coal fired power plants.

B. How Drywall Is Created

26. In order to form drywall, gypsum must be "calcined," or partially dehydrated by heating.

27. When gypsum is heated, it loses about three quarters of its water and becomes hemihydrate gypsum which is soft and can be easily ground to a powder called hemihydrate gypsum plaster.

28. The gypsum powder is then mixed with water to form a paste or slurry.

29. While the hemihydrate gypsum plaster is in slurry form, it is poured between two paper layers to make drywall.

30. Drywall is formed by sandwiching a core of wet gypsum between two sheets of heavy paper or fiberglass mats. When the core sets and is dried in a large drying chamber, the "sandwich" becomes rigid and strong enough for use as a building material.

31. The paste or slurry is typically mixed with fiber (usually paper and/or fiberglass), plasticizer, foaming agent, potash as an accelerator, starch or other chelate as a retarder, various additives that increase mildew and fire resistance (fiberglass or vermiculite), and water.

32. Drywall may consist of two other materials with sulfur content: alkyl ethoxy sulfates as foaming agents and lignin or napthalene sulfonates as dispersing agents.

33. On information and belief, Defendant CertainTeed completes its production process by labeling and printing on the back of finished board information, specifically including the production date. This identifying information should allow the identification of the date of manufacture, location of manufacture and the volume of material produced.

C. Recycled gypsum

34. In recent years, there has been an increase in the use of recycled scrap drywall in the manufacture of new American-manufactured drywall.

35. The construction of an average 2000 square foot home will generate one ton of unused scrap drywall.

36. Gypsum recyclers collect scrap drywall from mobile recycling units and other sources for sale to gypsum board manufacturers, including Defendant CertainTeed. The recycled gypsum powder generated from recycled construction waste is less expensive than the price of some other gypsum raw materials.

37. Defendant CertainTeed, as well as other American drywall manufacturers, participate in gypsum recycling systems and purchase wallboard scrap from gypsum recyclers.

38. Defendant CertainTeed and other American drywall manufacturers process and add recycled waste drywall to the mix of raw materials in the production process of American drywall.

D. The Defective Drywall Emits Noxious and Corrosive Levels of Sulfur Gases

39. Upon information and belief, Defendant's drywall contained naturally mined gypsum, synthetic gypsum manufactured from CCBs and recycled gypsum.

40. When gypsum, mined, synthetic or recycled, is subjected to certain environmental conditions present in the United States, or Mississippi in particular, which has both hot weather and high humidity, the product breaks down into sulfate ions which, in turn, can be chemically transformed into hydrogen sulfide gas and other sulfide gases.

41. The problem of sulfide emissions from drywall is well-understood in the drywall industry and has been studied for many years.

42. The level of sulfides emitted from drywall may depend, in part, on contamination of the drywall with sulfur materials or the use of contaminated gypsum materials.

43. Sulfide emissions from drywall have been a particular problem in landfills and, as such, many landfills refuse to accept drywall or place strict limitations on the amounts and on the ways in which drywall can be disposed.

44. Defendant CertainTeed manufactured, processed, distributed, delivered, supplied, inspected, marketed and/or sold defective American-manufactured drywall in the United States and in Mississippi, which was unreasonably dangerous for its normal use in that the drywall caused, and continues to cause, corrosion to HVAC coils, electrical wiring, plumbing components, appliances and other building materials and items in the home.

45. The sulfide released from the defective drywall also makes the product unreasonably dangerous for its normal intended use because it causes people to suffer irritant effects.

46. Defendant CertainTeed's defective American-manufactured drywall detrimentally affects and ultimately requires the replacement of a variety of household items, including but not limited to, air conditioning units, wiring, plumbing components, appliances and other building materials and items in the home. In addition, the defective drywall has a noxious odor.

47. During Plaintiff's use of the home, he suffered damages to, among other items, metal wiring and surfaces from exposure to Defendant's defective American-manufactured drywall. In addition, Plaintiff suffered headaches, respiratory problems, bloody noses and nausea from exposure to Defendant's defective American-manufactured drywall.

48. No member of the Class could have discovered the existence of the defect in the American-manufactured drywall prior to the time that the Consumer Product Safety Commission (CPSC) announced it was investigating problematic American manufactured drywall in 2009.

49. On information and belief, Defendant CertainTeed knew of the defective nature of their American-manufactured drywall as described herein and the probable impacts; however, Defendant CertainTeed actively concealed the same from the consuming public, members of the Class, and Plaintiff.

CONDITIONS PRECEDENT

50. All conditions precedent to bringing this action have been met, will have been met or were waived by Defendant.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2), (b)(3) and/or 23(c)(4) of the Federal Rules of Civil Procedure, on behalf of himself and the following Class and Subclass (collectively referred to herein as "the Class") comprised of:

Class Definitions

National Homeowners Class

a. All owners of residential homes in the United States containing defective drywall manufactured, sold, distributed, or supplied by CertainTeed. All members of the class are seeking compensatory damages, including damages for personal injury, and injunctive and/or equitable relief for environmental and medical monitoring. Defendant, its officers, directors, subsidiaries, or any person or other entity related to, affiliated with or employed by Defendant are excluded from the class definition.

Mississippi Homeowner Subclass

b. All owners of residential homes in Mississippi containing defective drywall manufactured, sold, distributed, or supplied by CertainTeed. All members of the class are seeking compensatory damages, including damages for personal injury, and injunctive and/or equitable relief for environmental and medical monitoring. Defendant, its officers, directors, subsidiaries, or any person or other entity related to, affiliated with or employed by Defendant are excluded from the class definition.

52. Charles A. Boggs is the class representative for the National Homeowner class, and the subclass representatives for the Mississippi Homeowner Subclass.

53. It is further averred upon information and belief that heretofore named and unnamed distributors were responsible for distributing the drywall to the named Plaintiff's home and Class members' homes. However, this information is in the control and possession of the manufacturing Defendants. Following discovery, Plaintiff contemplates that this information will be made available and the responsible distributors will either be specifically designated and/or joined in this action as Defendants.

NUMEROSITY

54. Upon information and belief, the Defendant's defective drywall was installed in hundreds of homes in the United States, including Mississippi; therefore, the Class is sufficiently numerous so that the joinder of all members of the Class in a single action is impracticable.

55. Upon information and belief, there are thousands of putative Class members involved in this case.

COMMONALITY

56. There are numerous common questions of law and fact that predominate over any questions affecting only individual members of the Class. Among these common questions of law and fact are the following:

a. whether Defendant manufactured, exported, distributed, delivered, supplied, inspected, marketed, and/or sold defective drywall products;

b. whether Defendant's drywall contains latent and/or manifest defects in the form of emitting sulfides and other chemicals;

c. whether Plaintiff and Class Members are entitled to recover compensatory, exemplary, incidental, consequential, and/or other damages as a result of Defendant's unlawful and tortious conduct;

d. whether Plaintiff and Class Members are entitled to recover injunctive and/or equitable relief as a result of Defendant's unlawful and tortious conduct;

e. whether Defendant's conduct in manufacturing, exporting, distributing, delivering, supplying, inspecting, marketing, and/or selling its drywall breached the duty of care owed by Defendant to Plaintiff and Class Members;

f. whether Defendant negligently manufactured a product that caused personal injuries to Plaintiff and members of the Class.

g. whether Defendant is strictly liable for selling a defective product;

h. whether Defendant failed to warn Plaintiff of the dangers and hazards related to the defective drywall;

i. whether Defendant breached implied warranties of fitness for a particular purpose;

j. whether Defendant breached express warranties;

k. whether Defendant created a private nuisance;

l. whether Defendant should create and fund an emergency notice program, environmental monitoring, and/or a medical monitoring program;

m. whether Defendant should give notice to Plaintiff and Class Members under Fed. R. Civ. P. 23(b) 2 or (d) of the defects in its drywall, of the need for necessary home inspection, and of the potential health risks associated with the drywall's defects; and

n. whether Plaintiff and Class members are entitled to attorney's fees, and if so, in what amount.

TYPICALITY

57. The legal claims of Plaintiff are typical of the legal claims of other members of the Class. Plaintiff has the same legal interests as other members of the Class.

58. The Plaintiff has defective drywall in his home, and each member of the Class has defective drywall in their home. Due to the defective drywall in Plaintiff's and Class Members' homes, Plaintiff and Class Members suffered damages in the form of economic damages, and the need for injunctive and equitable relief, as set forth herein.

59. Plaintiff and Class Members' homes and personal property have sustained the same type of economic damage and potential physical harm due to the defective drywall. Thus, the legal remedies available to Plaintiff and the Class Members are the same due to the wrongful conduct of Defendant. The Plaintiff's claims satisfy the typicality requirement.

ADEQUACY OF REPRESENTATION

60. Plaintiff is an adequate representative of the Class and, together with legal counsel, will fairly and adequately protect the interests of the Class. Plaintiff has no conflicts with the Class and is committed to the vigorous prosecution of this action and has retained competent counsel experienced in litigation of this nature to represent him. Plaintiff anticipates no difficulty in the management of this litigation as a class action. Moreover, the class representatives' interests are aligned with the Class Members and it is unlikely there will be a divergence of viewpoint.

61. The undersigned counsel are competent counsel experienced in class action litigation, mass torts, and litigation involving defective and harmful products. Counsel will fairly and adequately protect the interests of the class.

RULE 23(b)(1) REQUIREMENTS

62. The various claims asserted in this action are certifiable under the provisions of Federal Rules of Civil Procedure 23(b)(1) because prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests

of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

RULE 23(b)(2) REQUIREMENTS

63. The claims for injunctive relief in this case are certifiable under Fed. R. Civ. P. 23(b)(2). Defendant has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief is appropriate respecting the class as a whole.

RULE 23(b)(3) REQUIREMENTS

64. The common questions set forth above predominate over Class Members' individual issues.

65. A class action is superior to other methods of dispute resolution in this case. The Class members have an interest in class adjudication rather than individual adjudication because of the overlapping rights. It is highly desirable to concentrate the resolution of these claims in this single forum because it would be difficult and highly unlikely that the affected Class members would protect their rights on their own without this class action case. Management of the class will be efficient and far superior to the management of individual lawsuits.

COUNT I
NEGLIGENCE

66. Plaintiff adopts and restates paragraphs 1- 66 as if fully set forth herein.

67. Defendant owed a duty to Plaintiff and Class Members to exercise reasonable care in the a) design, b) manufacturing, c) exporting, d) distributing, e) delivering, f) supplying, g) inspecting, h) marketing, and/or i) selling of drywall, including a duty to adequately warn of its failure to do the same. Defendant's duties included, but were not limited to the following:

a. using reasonable care in the design of the drywall to prevent it from containing Defects as set forth herein;

b. using reasonable care in the manufacturing of the drywall to prevent it from containing Defects as set forth herein;

c. using reasonable care in the exporting of the drywall to prevent it from containing Defects as set forth herein;

d. using reasonable care in the distributing of the drywall to prevent it from containing Defects as set forth herein;

e. using reasonable care in the delivering of the drywall to prevent it from containing Defects as set forth herein;

f. using reasonable care in the supplying of the drywall to prevent it from containing Defects as set forth herein;

g. using reasonable care in the inspecting of the drywall to prevent it from containing Defects as set forth herein;

h. using reasonable care in the marketing of the drywall to prevent it from containing Defects as set forth herein;

i. using reasonable care in the selling of the drywall to prevent it from containing Defects as set forth herein;

j. adequately warning and instructing Plaintiff and Class Members of the Defects associated with drywall;

k. properly manufacturing the drywall to prevent it from containing the Defects as set forth herein;

l. properly selecting gypsum that did not contain excessive levels of sulfur;

m. recalling or otherwise notifying users at the earliest date that it became known that the drywall was dangerous and Defective;

n. advertising and recommending the use of drywall with sufficient knowledge as to its manufacturing defect and dangerous propensities;

o. not misrepresenting that the drywall was safe for its intended purpose when, in fact, it was not;

p. not manufacturing drywall in a manner which was dangerous to its intended and foreseeable users;

q. not distributing, delivering, and/or supplying drywall in a manner which was dangerous to its intended and foreseeable users;

r. not concealing information from Plaintiffs and Class Members regarding reports of adverse effects associated with drywall; and

s. not improperly concealing and/or misrepresenting information from Plaintiff and Plaintiff Class Members and/or the public, concerning the severity of risks and dangers of Defendant's drywall and/or the manufacturing Defect; and otherwise exercising reasonable care in the design, manufacturing, exporting, distributing, delivering, supplying, inspecting, marketing, and/or selling drywall to prevent it from containing Defects as set forth herein.

68. Defendant was negligent and breached its duty to exercise reasonable care in the a) design, b) manufacturing, c) exporting, d) distributing, e) delivering, f) supplying, g) inspecting, h) marketing, and/or i) selling of drywall, including its duty to adequately warn of its failure to do the same. Defendant's negligence included, but was not limited to the following:

a. failing to use reasonable care in the design of the drywall to prevent it from containing Defects as set forth herein;

b. failing to use reasonable care in the manufacturing of the drywall to prevent it from containing Defects as set forth herein:

c. failing to use reasonable care in the exporting of the drywall to prevent it from containing Defects as set forth herein;

d. failing to use reasonable care in the distributing of the drywall to prevent it from containing Defects as set forth herein;

e. failing to use reasonable care in the delivering of the drywall to prevent it from containing Defects as set forth herein;

f. failing to use reasonable care in the supplying of the drywall to prevent it from containing Defects as set forth herein;

g. failing to use reasonable care in the inspecting of the drywall to prevent it from containing Defects as set forth herein;

h. failing to use reasonable care in the marketing of the drywall to prevent it from containing Defects as set forth herein;

i. failing to use reasonable care in the selling of the drywall to prevent it from containing Defects as set forth herein;

j. failing to adequately warn and instruct Plaintiff and Class Members of the Defects associated with drywall;

k. failing to properly manufacture the drywall to prevent it from containing the Defects as set forth herein;

l. failing to properly select gypsum that did not contain excessive levels of sulfur;

m. failing to recall or otherwise notify users at the earliest date that it became known that Defendant's drywall was dangerous and Defective;

n. advertising and recommending the use of drywall without sufficient knowledge as to its manufacturing Defect and dangerous propensities;

o. misrepresenting that drywall was safe for its intended purpose when, in fact, it was not;

p. manufacturing drywall in a manner which was dangerous to its intended and foreseeable users, and which caused them to suffer personal injuries as alleged herein;

q. distributing, delivering, and/or supplying drywall in a manner which was dangerous to its intended and foreseeable users;

r. concealing information from Plaintiff and Class Members regarding reports of adverse effects associated with drywall; and

s. improperly concealing and/or misrepresenting information from Plaintiff and Plaintiff Class Members and/or the public, concerning the severity of risks and dangers of Defendant's drywall and/or the manufacturing Defect; and failing to otherwise exercising reasonable care in the design, manufacturing, exporting, distributing, delivering, supplying, inspecting, marketing, and/or selling drywall to prevent it from containing Defects as set forth herein.

69. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred economic damages and are entitled to recover monetary damages for: replacement/repair of her home; the removal and replacement of all of the drywall contained in their home; the replacement of Other Property (air-

conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, furnishings, electronic appliances, and other metal surfaces and household items); the repair and/or replacement of any materials contaminated or corroded by the drywall; and personal injuries resulting from exposure to Defendant's defective drywall

70. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred or will incur incidental and consequential damages for the costs of moving while homes are being repaired; renting of comparable housing during the duration of the repairs; the cost of repair or replacement of the homes; the loss of use and enjoyment of real property; the loss in value of the home due to the stigma attached to having defective drywall in the home; and other related expenses.

71. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has and is continuing to experience and suffer personal injury, mental and physical pain and suffering due to the considerable and constant anxiety of toxic exposure, injurious to both physical and mental health and wellbeing . In addition, by ingestion of noxious fumes and gases generated by said toxic drywall, Plaintiff has and is exposed to respiratory symptoms, increased susceptibility of respiratory infection, and aggravation of underlying physical and mental conditions.

72. Defendant knew or should have known that its wrongful acts and omissions would result in economic, incidental, and consequential damages in the manner set forth herein.

COUNT II
STRICT LIABILITY PURSUANT TO MISS. CODE ANN. § 11-1-63

73. Plaintiff adopts and restate paragraphs 1- 72 as if fully set forth herein.

74. At all times relevant hereto, Defendant was in the business of designing, manufacturing, exporting, distributing, delivering, supplying, inspecting, marketing, and/or selling drywall for sale to the general public.

75. The drywall, including that installed in the home of Plaintiff and Class Members, was placed in the stream of commerce by Defendant.

76. Defendant knew that the subject drywall would be used by consumers without prior inspection for defects.

77. Defendant intended that the drywall reach the ultimate consumer, such as Plaintiff and Class Members, and it indeed reached Plaintiff when it was installed in his home.

78. When installed in the Plaintiff's home and Class Members' homes, the drywall was in substantially the same condition it was when Defendant manufactured, sold, and/or delivered it.

79. At all times relevant hereto the subject drywall was used in a manner consistent with the uses intended by, or known to Defendant, and in accordance with the Defendant's directions and instructions.

80. The subject drywall was not misused or altered by any third parties.

81. The drywall was defectively manufactured, designed, inspected, tested, marketed, distributed, and sold. Defendant's defective drywall failed to function as expected, and there existed a feasible alternative – using domestic mined gypsum rather than gypsum manufactured from CCBs or from recycled drywall – that would to a reasonable probability have prevented the harm to Plaintiff and the Class.

82. The design defect was in designing drywall that allowed high levels of sulfur and/or other chemicals to emit through off-gassing and damage Plaintiff's property, causing corrosion of air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, electronic appliances, and other metal surfaces and household items ("Other Property"), and health hazards resulting in personal injury. Defendant knew, or in light of reasonably available knowledge or in the exercise of reasonable care should have known, about the danger posed by its defective drywall.

83. The manufacturing defect was in improperly selecting, testing, inspecting, mining, making, assembling, and using, gypsum in drywall that contained levels of sulfur that were too high and emitted various sulfide gases and/or other chemicals through "off-gassing," thereby creating noxious, "rotten egg-like" odors and causing corrosion of air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, electronic appliances, and other metal surfaces and household items ("Other Property").

84. The drywall was also defective because it was improperly exported, distributed, delivered, supplied, inspected, marketed, and/or sold in a defective condition, as described above.

85. The defective manufacturing, designing, inspecting, testing, marketing, distributing, and selling of the drywall rendered it unsafe and unreasonably dangerous for its intended use and to the Plaintiff and Class Members.

86. The drywall is also defective and unreasonably dangerous because Defendant failed to adequately warn and instruct the Plaintiff and Class Members of the

defective design, inspection, testing, manufacturing, marketing, and selling of the drywall.

87. Plaintiff and Class Members were unaware of the unreasonably dangerous propensities and defective condition of the drywall, nor could Plaintiff and Class Members, acting as a reasonably prudent people, discover that Defendant's drywall was defective, as set forth herein, or perceive its danger.

88. Defendant's defective drywall was much more dangerous and harmful than expected by the average consumer and by Plaintiff and Class Members.

89. Defendant's defective drywall's benefit to Plaintiff and Class Members, if any, was greatly outweighed by the risk of harm and danger to them.

90. The defects in the drywall, as well as Defendant's failure to adequately warn Plaintiff and Class Members of the drywall's defects, rendered the drywall unreasonably dangerous and was the direct and proximate cause of damages to Plaintiff and Class Members.

91. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred economic damages and are entitled to recover monetary damages for: replacement/repair of their home; the removal and replacement of all of the drywall contained in their home; the replacement of Other Property (air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, furnishings, electronic appliances, and other metal surfaces and household items); the repair and/or replacement of any materials contaminated or corroded by the drywall; and personal injuries resulting from their exposure to Defendant's defective drywall.

92. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred or will incur incidental and consequential damages for the costs of moving while homes are being repaired; renting of comparable housing during the duration of the repairs; the cost of repair or replacement of the homes; the loss of use and enjoyment of real property; the loss in value of the home due to the stigma attached to having defective drywall in the home; and other related expenses.

93. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has and is continuing to experience and suffer personal injury, mental and physical pain and suffering due to the considerable and constant anxiety of toxic exposure, injurious to both physical and mental health and wellbeing . In addition, by ingestion of noxious fumes and gases generated by said toxic drywall, Plaintiff has and is exposed to respiratory symptoms, increased susceptibility of respiratory infection, and aggravation of underlying physical and mental conditions.

COUNT III
UNJUST ENRICHMENT

94. Plaintiff adopts and restates paragraphs 1- 93 as if fully set forth herein.

95. Defendant received monies as a result of Plaintiff's and Class Members' purchases of Defendant's defective drywall, or purchase of a home containing this drywall, either directly or through an agent, and Defendant wrongfully accepted and retained these benefits to the detriment of Plaintiff and Class Members.

96. Defendant's acceptance and retention of these benefits under the circumstances make it inequitable and unjust for Defendant to retain the benefit without payment of the value to Plaintiff and the Class.

97. Defendant, by the deliberate and tortious conduct complained of herein, has been unjustly enriched in a manner which warrants restitution.

98. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred economic damages and are entitled to recover monetary damages for: replacement/repair of their home; the removal and replacement of all of the drywall contained in their home; the replacement of Other Property (air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, electronic appliances, and other metal surfaces and household items); the repair and/or replacement of any materials contaminated or corroded by the drywall; and personal injuries resulting from their exposure to Defendant's defective drywall.

99. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred or will incur incidental and consequential damages for the costs of moving while their home is being repaired; renting of comparable housing during the duration of the repairs; the loss of use and enjoyment of real property; and the loss in value of the home due to the stigma attached to having defective drywall in the home; and other related expenses.

100. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has and is continuing to experience and suffer personal injury, mental and physical pain and suffering due to the considerable and constant anxiety of toxic exposure, injurious to both physical and mental health and wellbeing . In addition, by ingestion of noxious fumes and gases generated by said toxic drywall, Plaintiff has and is exposed to respiratory symptoms,

increased susceptibility of respiratory infection, and aggravation of underlying physical and mental conditions.

101. Defendant knew or should have known that its wrongful acts and omissions would result in economic, incidental, and consequential damages in the manner set forth herein.

COUNT IV
EQUITABLE AND INJUNCTIVE RELIEF AND MEDICAL MONITORING

102. Plaintiff adopts and restates paragraphs 1-101 as if fully set forth herein.

103. Plaintiff and the Class are without adequate remedy at law, rendering injunctive and other equitable relief appropriate.

104. Plaintiff and the Class will suffer irreparable harm if the Court does not render the injunctive relief and medical monitoring relief set forth herein, and if Defendant is not ordered to recall, buy back, and/or repair the Plaintiff's home.

105. Plaintiff on behalf of himself and all others similarly situated, demands injunctive and equitable relief and further, that Defendant be ordered to: (1) remedy, repair and/or replace the drywall in the homes, (2) cease and desist from misrepresenting to the Class and the general public that there is no defect in, or danger associated with, the drywall, (3) institute, at their own cost, a public awareness campaign to alert the Class and general public of the defect and dangers associated with the drywall (4) create, fund, and support a medical monitoring program consistent with the requirements of Mississippi law.

106. Until Defendant's defective drywall has been removed, Defendant should provide continued environmental and air monitoring in Plaintiff's and Class Members' homes.

107. Plaintiff and Class Members have been exposed to greater than normal background levels of sulfides and other hazardous chemicals as a result of exposure to Defendant's defective drywall.

108. The sulfides gases and the other chemicals which have been released from Defendant's drywall and to which Plaintiff and Class Members have been exposed are proven hazardous, dangerous, or toxic substances.

109. Plaintiff's and Class Members' exposure was caused by the Defendant's negligence or otherwise tortious conduct.

110. Plaintiff's and Class Members' exposure may lead to serious health problems, diseases, and medical conditions that may be prevented by timely medical diagnosis and treatment.

111. The method and means for diagnosing the Plaintiff's and Class Members' potential medical problems are well accepted in the medical and scientific community and will be of great benefit to the Plaintiff and Class Members by preventing or minimizing health problems that they may encounter as a result of the defective drywall.

112. As a proximate result of their exposure to sulfide gases and other toxic chemicals from Defendant's defective drywall, Plaintiff and Class Members have developed a significantly increased risk of contracting a serious latent disease and suffered physical injuries.

113. Monitoring procedures exist that make the early detection of any latent disease possible and which are different from those normally recommended in the absence of the exposure.

114. The prescribed monitoring regime is reasonably necessary according to contemporary scientific principles.

COUNT V
NUISANCE

115. Plaintiff adopts and restates paragraphs 1-114 as if fully set forth herein.

116. At all times relevant hereto, Defendant was in the business of exporting, distributing, delivering, supplying, inspecting, marketing, and/or selling drywall for sale to the general public.

117. The drywall, including that installed in the homes of Plaintiff and Class Members was placed in the stream of commerce by Defendant.

118. Defendant knew that the subject drywall would be used without inspection for defects by consumers.

119. Defendant intended that the drywall reach the ultimate consumer, such as Plaintiff and Class Members, and it indeed reached Plaintiff and Class Members when it was installed in their homes.

120. When installed in the Plaintiff's and Class Members' homes, the drywall was in substantially the same condition it was when Defendant distributed, supplied, sold, and/or delivered it.

121. At all times relevant hereto the subject drywall was used in a manner consistent with the uses intended by, or known to Defendant, and in accordance with the Defendant's directions and instructions.

122. The subject drywall was not misused or altered by any third parties or Plaintiff or Class Members.

123. The drywall was defectively manufactured, designed, inspected, tested, marketed, distributed, delivered, and/or sold.

124. The design defect was in designing drywall that allowed high levels of sulfur and/or other chemicals to emit through off-gassing and damage Plaintiff's property, causing corrosion of air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, electronic appliances, and other metal surfaces and household items ("Other Property") and potential health hazards.

125. The manufacturing defect was in improperly selecting, testing, inspecting, mining, making, assembling, and using gypsum in drywall that contained levels of sulfur that were too high and emitted various sulfide gases and/or other chemicals through "off-gassing," creating noxious, "rotten egg-like" odors and thereby causing corrosion of air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, electronic appliances, and other metal surfaces and household items ("Other Property").

126. The defective manufacturing, designing, inspecting, testing, marketing, distributing, and selling of the drywall rendered it unsafe and unreasonably dangerous for its intended use and to the Plaintiff and Class Members.

127. Defendant's defective drywall was unreasonably dangerous and harmful as described herein.

128. Defendant's defective drywall's benefit to Plaintiff and Class Members, if any, was greatly outweighed by the risk of harm and danger to them.

129. Defendant's drywall is a nuisance, as the sulfur and other gases emitted unreasonably interfere with Plaintiff and Class Members' use and enjoyment of their property by corroding Other Property.

130. Corrosion itself is an unreasonable interference with Plaintiff and Class Members' use and enjoyment of their property.

131. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred economic damages and are entitled to recover monetary damages for: replacement/repair of their home; the removal and replacement of all of the drywall contained in their home; the replacement of Other Property (air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, furnishings, electronic appliances, and other metal surfaces and household items); the repair and/or replacement of any materials contaminated or corroded by the drywall; and personal injuries resulting from their exposure to Defendant's defective drywall.

132. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred or will incur incidental and consequential damages for the costs of moving while the home is being repaired; renting of comparable housing during the duration of the repairs; the cost of repair or replacement of the home; the loss of use and enjoyment of real property; the loss in value of the home due to the stigma attached to having defective drywall in the home; and other related expenses.

133. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has and is continuing to experience and suffer personal injury, mental and physical pain and suffering due to the considerable and constant anxiety of toxic exposure, injurious to both

physical and mental health and wellbeing . In addition, by ingestion of noxious fumes and gases generated by said toxic drywall, Plaintiff has and is exposed to respiratory symptoms, increased susceptibility of respiratory infection, and aggravation of underlying physical and mental conditions.

COUNT VI
BREACH OF EXPRESS WARRANTY

134. Plaintiff adopts and restates paragraphs 1- 133 as if fully set forth herein.

135. At the time Plaintiff purchased Defendant's defective drywall, Defendant made affirmations of fact and/or promises regarding the quality of its product. Defendant expressly warranted that its product was free from defect. This express warranty, upon which Plaintiff and Class Members relied, became the basis of the bargain between Plaintiff and Class Members and Defendant and thus created an express warranty that Defendant's goods would conform to Defendant's affirmation or promise.

136. Defendant, in selling to Plaintiff and Class Members drywall that was defective, breached the express warranty it provided to Plaintiff and Class Members. Defendant is a merchant with respect to drywall.

137. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred economic damages and are entitled to recover monetary damages for: replacement/repair of their home; the removal and replacement of all of the drywall contained in their home; the replacement of Other Property (air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, furnishings, electronic appliances, and other metal surfaces and household items); the repair and/or replacement of any materials

contaminated or corroded by the drywall; and personal injuries resulting from their exposure to Defendant's defective drywall.

138. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred or will incur incidental and consequential damages for the costs of moving while the home is being repaired; renting of comparable housing during the duration of the repairs; the cost of repair or replacement of the home; the loss of use and enjoyment of real property; the loss in value of the home due to the stigma attached to having defective drywall in the home; and other related expenses.

139. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has and is continuing to experience and suffer personal injury, mental and physical pain and suffering due to the considerable and constant anxiety of toxic exposure, injurious to both physical and mental health and wellbeing . In addition, by ingestion of noxious fumes and gases generated by said toxic drywall, Plaintiff has and is exposed to respiratory symptoms, increased susceptibility of respiratory infection, and aggravation of underlying physical and mental conditions.

COUNT VII
BREACH OF IMPLIED WARRANTY

140. Plaintiff adopts and restates paragraphs 1-139 as if fully set forth herein.

141. At the time Plaintiff and Class Members purchased Defendant's defective drywall, Defendant knew the particular purpose for which the goods were required – constructing a home – and that Plaintiff and Class Members were relying on Defendant's skill and judgment to furnish suitable goods.

142. Defendant, in selling drywall to Plaintiff and Class Members, provided Plaintiffs an implied warranty that the goods were fit for the purpose of constructing a

home and that the goods were merchantable. Defendant is a merchant with respect to drywall.

143. Plaintiff and Class Members relied on Defendant's warranties of merchantability and fitness for a particular purpose.

144. Defendant, in selling to Plaintiff and Class Members drywall that was defective, and thus not suitable for its intended purpose and not merchantable, breached its warranties of merchantability and fitness for a particular purpose.

145. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred economic damages and are entitled to recover monetary damages for: replacement/repair of their home; the removal and replacement of all of the drywall contained in their home; the replacement of Other Property (air-conditioner and refrigerator coils, microwaves, faucets, utensils, copper tubing, electrical wiring, computer wiring, personal property, furnishings, electronic appliances, and other metal surfaces and household items); the repair and/or replacement of any materials contaminated or corroded by the drywall; and personal injuries resulting from their exposure to Defendant's defective drywall.

146. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff and Class Members have incurred or will incur incidental and consequential damages for the costs of moving while the home is being repaired; renting of comparable housing during the duration of the repairs; the cost of repair or replacement of the home; the loss of use and enjoyment of real property; the loss in value of the home due to the stigma attached to having defective drywall in the home; and other related expenses.

147. As a direct and proximate cause of Defendant's acts and omissions, Plaintiff has and is continuing to experience and suffer personal injury, mental and physical pain and suffering due to the considerable and constant anxiety of toxic exposure, injurious to both physical and mental health and wellbeing . In addition, by ingestion of noxious fumes and gases generated by said toxic drywall, Plaintiff has and is exposed to respiratory symptoms, increased susceptibility of respiratory infection, and aggravation of underlying physical and mental conditions.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, on behalf of all others similarly situated and the Class, demands:

a. an order certifying the case as a class action;

b. an order appointing Plaintiff as the Class Representative of the Class;

c. an order appointing undersigned counsel and their firms as counsel for the Class;

d. compensatory damages, including damages for personal injuries and breach of warranty;

e. an order and judgment requiring the necessary repairs, relocation costs, personal property replacement, establishment of environmental and medical monitoring programs;

f. pre-judgment and post-judgment interest, as applicable, at the maximum rate allowable at law;

g. all statutory damages;

h. an award of attorneys' fees to class counsel based upon a common fund theory as allowed by Federal law, for the benefits conferred upon the Class and/or as allowed by contract or statute;

i. the costs and disbursements incurred by Plaintiff and Class Members in connection with this action, including reasonable attorneys' fees based on the benefits conferred upon the Class, a common fund, statutory, and/or contractual basis;

j. an award of taxable costs;

k. equitable, injunctive, and declaratory relief;

l. pursuant to Rule 23(b)(2) and/or Rule 23(d), Plaintiff seeks notice to Class Members of the defective drywall in their home, including notice of the need to have the home inspected, and potential health risks associated with the drywall;

m. environmental and air monitoring;

n. medical monitoring; and

o. such other and further relief under all applicable state and federal law and any other relief the Court deems just and appropriate.

Submitted this the 10th day of August, 2010

By: /s/ Dewitt M. Lovelace

Dewitt M. Lovelace (MS Bar # 1449)
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DEMAND FOR JURY TRIAL

Plaintiff individually and on behalf of the Class Members, hereby demands a trial by jury as to all issues so triable as a matter of right.

DATED: August 10, 2010

/s/ Dewitt M. Lovelace
Dewitt M. Lovelace

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Complaint was sent via the Court's ECF filing system to all counsel of record.

This the 10th day of August, 2010.

/s/ Dewitt M. Lovelace
Dewitt M. Lovelace